STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 18, 2008
v	No. 278952 Wayne Circuit Court
ELIJAH MANDLE MIDGETT, Defendant-Appellant.	LC No. 06-014380-01

Before: Murphy, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Defendant appeals by right his jury trial convictions for two counts of operating a vehicle under the influence of liquor causing death, MCL 257.625(4), and two counts of operating a motor vehicle with a suspended license causing death, MCL 257.904(4). The trial court sentenced defendant to 16 to 60 years in prison for all counts. We affirm.

I. Right to Due Process and a Fair Trial

Defendant first argues that the police and the prosecutor denied him his rights to due process and a fair trial by failing to properly investigate the case. Defendant notes that the police noticed what could have been a spot of blood on the steering wheel, but they did not analyze it. Defendant further contends that the police failed to search for hair or clothing fibers on the deployed airbag and did not sweep the van for fingerprints. Because defendant failed to raise this issue below, this Court's review is limited to plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 764-767; 597 NW2d 130 (1999).

Despite defendant's argument to the contrary, our Supreme Court has held that the prosecutor and the police do not have a duty to investigate on behalf of a defendant, or to seek and find exculpatory evidence. *People v Burwick*, 450 Mich 281, 289 n 10; 537 NW2d 813 (1995); *People v Sawyer*, 222 Mich App 1, 6; 564 NW2d 62 (1997). Defendant contends that the police should have done more to prove his theory that he was not driving at the time of the crash. Under established case law, however, the prosecutor and the police had no obligation to do so. "Absent a showing of suppression of evidence, intentional misconduct, or bad faith, the prosecutor and the police are not required to test evidence to accord a defendant due process." *People v Coy*, 258 Mich App 1, 21; 669 NW2d 831 (2003).

Moreover, defendant relies on inapplicable cases to support his argument. Criminal defendants have a due process right to obtain "evidence in the possession of the prosecutor if it is favorable to the accused and material to guilt or punishment." *People v Stanaway*, 446 Mich 643, 666; 521 NW2d 557 (1994), applying *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963). To establish a *Brady* violation:

> [A] defendant must prove: (1) that the state possessed evidence favorable to the defendant; (2) that the defendant did not possess the evidence nor could the defendant have obtained it with any reasonable diligence; (3) that the prosecution suppressed the favorable evidence; and (4) that had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceedings would have been different. [*People v Cox*, 268 Mich App 440, 448; 709 NW2d 152 (2005).]

Here, defendant does not allege that the prosecutor possessed or sought to suppress evidence favorable to his case. Rather, he contends that inadequate investigation occurred. Therefore, his reliance on *Brady* is misplaced.

Defendant's reliance on *People v Jordan*, 23 Mich App 375; 178 NW2d 659 (1970), proves similarly unavailing. In *Jordan*, this Court dealt with the foundation for the admission of evidence. Specifically, this Court considered whether laboratory testing of a handkerchief with stains of uncertain origins was required in order to establish the necessary foundation for its admission into evidence in a sexual assault case, not whether the prosecutor or the police had a duty to test the handkerchief. *Id*. at 385-389. Here, defendant does not challenge the necessary foundation for the admission of any evidence. Instead, he challenges the police and prosecutor's duty to further investigate. As discussed in *Burwick, supra* at 289 n 10 and *Sawyer, supra* at 6, no such duty exists. Thus, defendant's reliance on *Jordan* is misplaced.

II. Sufficiency of the Evidence

Defendant next argues that insufficient evidence existed to support his convictions because the prosecutor did not offer sufficient evidence that he was driving at the time of the crash. This Court reviews claims of insufficient evidence de novo. *People v Kanaan*, 278 Mich App 594, 618; 751 NW2d 57 (2008). To determine whether sufficient evidence exists to support a conviction, this Court considers the evidence in a light most favorable to the prosecution, and decides whether any rational fact-finder could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Odom*, 276 Mich App 407, 418; 740 NW2d 557 (2007).

Viewing the evidence in a light most favorable to the prosecution, a rational fact-finder could find sufficient evidence that defendant was driving the van at the time of the crash. Carla Goodloe-Sylvester testified that she saw only defendant in the van. Similarly, Michelle Evans-Dobbs testified that the only parties injured in the crash were the two people in the car and one man sitting on the ground next to the van. Frederick Gaines confirmed that he placed defendant on the ground near the van after the accident. Further, Gaines did not see anyone in the van except defendant.

Defendant argues that his exiting from the passenger side of the van indicates that he was a passenger and not the driver. Both an expert in accident investigation and the officer in charge of the case, however, testified that the front driver's side door was inoperable. Defendant places great weight on which side of his head was injured, but at least one witness observed that the knot was on the left side of defendant's head, not the right side. Finally, a conflict regarding the color of defendant's jacket or sweater implicates the fact-finder's role in weighing evidence and judging credibility. This Court will not interfere with the fact-finder's role in weighing the evidence and judging the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992) amended on other grounds 441 Mich 1201 (1992). It is for the trier of fact to decide what inferences can be fairly drawn from the evidence and to judge the weight it accords to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). The prosecutor and defendant provided different explanations for the conflicting evidence presented, and the jury resolved that conflict in favor of the prosecution. A rational fact-finder could have found that defendant was driving the van at the time of the crash. Therefore, sufficient evidence supports his convictions.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Michael R. Smolenski